

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ORANGE COUNTY CHOPPERS, INC., a New York
Corporation,

Plaintiff-Counterdefendant,

vs.

OLAES ENTERPRISES, INC. d/b/a ODM, a California
Corporation,

Defendant-Counterplaintiff,

vs.

ORANGE COUNTY CHOPPERS, INC., a New York
corporation, VENDING SUPPLY, INC., a Nevada
corporation, INTERBRAND, LLC, a Delaware limited
liability corporation, BRIEFLY STATED, INC., a New
York corporation, C-LIFE GROUP LTD, a New York
corporation, PLASTICOLOR MOLDED PRODUCTS,
INC., a California corporation, ROBISON'S, INC.
d/b/a POWER TRIP, an Idaho corporation, and THE
HUT LLC, a California limited liability company,

Counterdefendants.

Hon. William C. Connor

Civil Action No.
06-CV-7211 (WCC)

ECF CASE

ANSWER AND
CROSS-CLAIM OF
BRIEFLY STATED, INC.

Counterclaim defendant **BRIEFLY STATED, INC.**, by its attorneys, Harvey and Mumford
LLP, for its answer to Counterplaintiff Olaes Enterprises, Inc.'s first amended counterclaims
(hereafter "Third Party Complaint"), states as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the
allegations contained in paragraph 1 of the Third Party Complaint.

2. Denies knowledge or information sufficient to form a belief as to the truth of the
allegations contained in paragraph 2 of the Third Party Complaint, except admits that Orange
County Choppers has an address at 27 Stone Castle Road, Rock Tavern, New York 12575.

3. Denies knowledge or information sufficient to form a belief as to the truth of the

allegations contained in paragraphs 3 and 4 of the Third Party Complaint.

4. Denies the allegations of paragraph 5 of the Third Party Complaint, except admits that Briefly Stated, Inc. is a New York corporation with a place of business in New York, New York.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 6, 7, 8 and 9 of the Third Party Complaint.

6. Neither admits nor denies the allegations contained in paragraph 10 of the Third Party Complaint as such allegations state conclusions of law to which no responsive pleading is required, and respectfully refers all questions of law to the Court for its consideration.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Third Party Complaint.

8. Neither admits nor denies the allegations contained in paragraph 12 of the Third Party Complaint as such allegations state conclusions of law to which no responsive pleading is required, and respectfully refers all questions of law to the Court for its consideration.

Count One

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 of the Third Party Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Third Party Complaint, except admits that Orange County Choppers entered into an agreement with Briefly Stated, Inc., pursuant to which Orange County Choppers furnished artwork designs to Briefly Stated, Inc.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Third Party Complaint.

12. Denies that Briefly Stated, Inc. has infringed, directly or through agents, any copyrights belonging to Olaes Enterprises, Inc. doing business as ODM (hereafter “ODM”), admits copyright registration certificates are attached to the Third Party Complaint, and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 26 of the Third Party Complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Third Party Complaint.

14. Denies those allegations contained in paragraphs 28, 29 and 30 of the Third Party Complaint as they relate to Briefly Stated, Inc., and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in those paragraphs.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the Third Party Complaint, except denies that Briefly Stated, Inc. has infringed upon ODM’s copyrighted designs.

16. Denies the allegations contained in paragraphs 32, 33, 34, 35, 36 and 37 of the Third Party Complaint as they relate to Briefly Stated, Inc., and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in those paragraphs.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80 and 81, except admits that Briefly Stated, Inc. entered into an agreement with Orange County Choppers,

pursuant to which Briefly Stated, Inc. was furnished artwork designs and denies that Briefly Stated, Inc. has participated in and/or is guilty of any wrongdoing or otherwise liable to ODM.

AFFIRMATIVE DEFENSES

18. Briefly Stated, Inc. does not assume the burden of proof with respect to the defenses set forth below where the substantive law provides otherwise.

FIRST AFFIRMATIVE DEFENSE

19. The Third Party Complaint as it relates to Briefly Stated, Inc. fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

20. ODM does not, upon information and belief, own the copyrights in the underlying work upon which it bases its copyright infringement claim against Briefly Stated, Inc., and ODM's copyright registrations for such works are, therefore, invalid.

THIRD AFFIRMATIVE DEFENSE

21. The ODM Designs, as defined in the Third Party Complaint, and registered in the Copyright Office by ODM, lack sufficient authorship and/or creativity to support the Copyright Registrations asserted by it against Briefly Stated, Inc.

FOURTH AFFIRMATIVE DEFENSE

22. Any similarity existing between the ODM Designs and designs exploited by Briefly Stated, Inc. is *de minimus* and involves non-copyrightable matter.

FIFTH AFFIRMATIVE DEFENSE

23. Briefly Stated, Inc. entered into an agreement (the "Agreement") with Orange County Choppers to license from Orange County Choppers the use of Orange County Choppers' logos,

trademarks and controlled designs owned or controlled by Orange County Choppers (the “Licensed Material”) in connection with the sale of products sold by Briefly Stated, Inc. (the “Licensed Product”).

24. At no time during the period Briefly Stated, Inc. sold Licensed Product did ODM complain to Briefly Stated, Inc. about the designs contained on the Licensed Product nor in any other manner notify Briefly Stated, Inc. that the Licensed Product infringed ODM’s copyrights.

25. The claim asserted by ODM in its Third Party Complaint against Briefly Stated, Inc. is therefore barred by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

26. The claim asserted by ODM in its Third Party Complaint against Briefly Stated, Inc. is barred by the applicable Statute of Limitations.

SEVENTH AFFIRMATIVE DEFENSE

27. If ODM has suffered any damages by reason of any acts, omissions, or courses of conduct on the part of Briefly Stated, Inc., all or part of the damages were caused by or attributable to the failure of ODM to act reasonably or prudently to mitigate its damages.

EIGHTH AFFIRMATIVE DEFENSE

28. Any injury or damage allegedly suffered by ODM was caused or contributed to by the negligence, fault, breach of contract or other wrongful or tortious conduct of persons or entities other than Briefly Stated, Inc. and such conduct eliminates or comparatively reduces the percentage of liability, if any, of Briefly Stated, Inc.

NINTH AFFIRMATIVE DEFENSE

29. ODM consented to the alleged use of the ODM Designs by Briefly Stated, Inc. and

is therefore barred from obtaining the recovery requested, or any recovery at all, from Briefly Stated, Inc.

TENTH AFFIRMATIVE DEFENSE

30. Each and every cause of action alleged against Briefly Stated, Inc. is barred, in whole or in part, by the equitable doctrine of unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

31. ODM has knowingly and voluntarily waived each and all of its purported claims and causes of action against Briefly Stated, Inc.

TWELFTH AFFIRMATIVE DEFENSE

32. Each and every cause of action alleged against Briefly Stated, Inc. is barred, in whole or in part, by reasons of the acts and representations of ODM, upon which Briefly Stated, Inc. relied to its detriment, thereby barring the claims asserted pursuant to the doctrine of estoppel.

AS AND FOR A CROSS-CLAIM FOR INDEMNIFICATION

33. The Agreement requires Plaintiff-Counterdefendant Orange County Choppers to indemnify, defend and hold Briefly Stated, Inc. harmless from any and all claims, suits, liabilities, judgments, penalties, losses, costs, damages, and expenses resulting therefrom, including reasonable attorneys' fees, asserted by third parties against Briefly Stated, Inc. based on a claim of right in one or more elements of the Licensed Material.

34. As a result of the terms of the Agreement, Briefly Stated, Inc. shall be indemnified and made whole by Plaintiff-Counterdefendant Orange County Choppers for any damages awarded against Briefly Stated, Inc. and/or defense costs (including reasonable attorneys' fees) incurred by Briefly Stated, Inc. as a result of this action.

WHEREFORE, counterclaim defendant Briefly Stated, Inc. respectfully demands judgment:

- (1) dismissing the Third Party Complaint in its entirety against it;
- (2) directing, pursuant to 17 U.S.C. §505, that Defendant-Counterplaintiff Olaes Enterprises, Inc. d/b/a ODM pay to Briefly Stated, Inc. the costs of this action and reasonable attorneys' fees to be allowed to Briefly Stated, Inc. by the Court;
- (3) in the event that any damages are assessed against Briefly Stated, Inc. in this action, directing that Plaintiff-Counterdefendant Orange County Choppers, Inc. indemnify Briefly Stated, Inc. for any damages awarded against Briefly Stated, Inc. and/or defense costs (including reasonable attorneys' fees) incurred by Briefly Stated, Inc. as a result of this action; and
- (4) granting such other and further relief as this Court deems just and proper.

Dated: Albany, New York
February 25, 2008

HARVEY AND MUMFORD LLP
Attorneys for Counterdefendant
Briefly Stated, Inc.

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